



**IT IS ORDERED as set forth below:**

**Date: March 03, 2009**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_|  
IN RE:

CASE NO. 08-79346

Antonio Bernard Bates,

CHAPTER 13

Debtor.  
\_\_\_\_\_|

JUDGE MASSEY

**ORDER DENYING MOTION OF OCWEN LOAN SERVICING, LLC  
TO DISMISS WITH PREJUDICE, DENYING CONFIRMATION OF DEBTOR'S  
PLAN, AND GRANTING REQUEST OF TRUSTEE TO DISMISS**

In this case, the Chapter 13 Trustee objected to confirmation and included in her objection a request for dismissal of this case. Under section 1307(c)(5), the Court may dismiss a case on the request of a party in interest where confirmation of the debtor's plan is denied, at least in the absence of a request for additional time to file another plan. Debtor has made no such request.

Ocwen Loan Servicing, LLC also filed an objection to confirmation and included in the title of the same document a reference to a motion to dismiss the case with prejudice. Ocwen's motion was not accompanied by a separate notice of hearing on the motion to dismiss, although

buried in its objection, it did point out that it would “bring on” its objection and motion at the hearing on confirmation of Debtor’s plan on December 17, 2008.

On December 17, the Courtroom Deputy Clerk called this case as a part the court calendar for confirmation of Chapter 13 plans; notice of the confirmation hearing was provided to Debtor and other parties in interest in the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines served on October 4, 2008. At the call of this case, the Trustee’s counsel announced that the Trustee had outstanding objections, and counsel for Ocwen announced that “we have a 109(g) objection.” (There is no such thing as a 109(g) objection.) Counsel for the Debtor then asked whether Antonio Bates was in the courtroom, and when no one answered, he stated, “we have no opposition to the objection.” No one referred explicitly to the motion to dismiss with prejudice. The Courtroom Deputy Clerk then told the attorney for Ocwen that “you may present an order.”

Nothing else has happened on the record of this case until the entry of this Order.

On February 27, 2009, two months after an order was due under Bankruptcy Local Rule 9013-2(a), Ocwen’s counsel presented a four page proposed order that would dismiss the case with prejudice, notwithstanding that no mention of the motion was made at the calendar call on December 17 and the Court did not hear the motion. By failing to mention the motion at the calendar call, counsel did not “bring on” the motion – it was not before the Court. Had Ocwen filed its motion and a notice of hearing separately from its objection and scheduled a hearing on its motion, it would not have fallen into a trap of its own making. Further, the inordinate delay in presenting a proposed order is alone fatal to the motion.

The proposed order provided in the last paragraph:

IT IS HEREBY ORDERED that the Objections are sustained, and this case is dismissed pursuant to 11 U.S.C. Section 109(g) as to Chapter 13 only. The Debtor is hereby ineligible to file a Chapter 13 case. The Debtor is hereby ineligible to file for any relief under Title 11 U.S.C. for 180 days from the date of entry of this Order.

Thus, the portion of the proposed order in which the Court would rule did not even mention the motion. The word “motion” appears in the title of the proposed order but nowhere else. The proposed order is incoherent in that it would dismiss the case under section 109(g) in the next to last sentence only as to Chapter 13 but in the last sentence dismiss it so as to bar the Debtor from filing any case under title 11 of the U.S. Code for 180 days.

Mr. Bates should not misread this Order as a blessing of his conduct in this and other cases. Should such conduct as that described in the objections to confirmation filed in this case persist in any future case he files, the Court may bar him from being a debtor in a bankruptcy case for several years.

For these reasons, Ocwen’s motion to dismiss with prejudice is DENIED. Confirmation of Debtor’s Plan is DENIED, and the Trustee’s request that the case be dismissed is GRANTED. This case is DISMISSED.

\*\*\*END OF ORDER\*\*\*